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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,017	03/17/2004	Ronald R. Reinecke	43003.00.001	5126
7590 08/09/2005				
JOHN W. HARBST 1180 LITCHFIELD LANE BARTLETT, IL 60103			EXAMINER REHM, ADAM C	
			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

H.P.

Office Action Summary	Application No.	Applicant(s)	
	10/803,017	REINECKE ET AL.	
	Examiner	Art Unit	
	Adam C. Rehm	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/12/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the sentence: "What would a child's birthday party be without that child's interaction in blowing out the candles on the cake." Paragraph 2, Lines 3-4. It appears that the applicant poses a query, which requires the use of a question mark ("?") as opposed to a period ("."). Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 5-7, 9-13, 15, 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over SMALL (US 2004/0203317) in view of AMBROSINO (US 5,582,478).

SMALL discloses:

- Thematic-walled structure/enclosed chamber (100A);
- Interior light sources/LEDs/imitation candles (513, Paragraph 48, Lines 11-14);
- A battery power source (Paragraph 72, Lines 7-9);
- Electric circuits for connecting the light source to the power source (405, Paragraph 48);

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- Windows (108) and opaque walls (204E, Paragraph 38, Lines 10-11);
- A power switch (610, Paragraph 72, Lines 7-9); and
- A removable panel (102A/102B, Paragraph 33).

3. SMALL does not disclose imitation candles having sensors, which are responsive to motion of air whereby causing said candles to cease yielding illumination. However, AMBROSINO (US 5,582,478) teaches imitation birthday candles (18) having sensors (32) that are responsive to the motion of air (Column 2, Lines 49-54) against a panel (Column 2, Lines 59-66). It would have been obvious to one of ordinary skill in the art at the time of invention to modify SMALL, which utilizes imitation birthday candles and use the improved imitation birthday candles as taught by AMBROSINO in order to provide a thematic, miniature installation having a light source that imitates the nature of a real candle whose flame can be extinguished when a person blows upon it to extinguish the flame.

4. Claims 4, 8, 14, 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over SMALL (US 2004/0203317), AMBROSINO (US 5,582,478) as applied to Claims 1-3, 9 and 15 and further in view of applicants admitted prior art.

5. Neither SMALL nor AMBROSINO explicitly disclose a walled structure having an opaque portion and a transparent portion through which light can be viewed. However, applicant admits, "toys...having a light source contained therein for producing luminescence through windows...are known in the art (Paragraph 2, Lines 8-9). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the walled enclosure of GIBSON and use applicant's admitted prior art and

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provide windows in said closed chamber (1) in order to allow luminescence from internal light sources (12) to be viewed externally.

6. Furthermore, neither SMALL nor AMBROSINO explicitly disclose the use of an imitation candle within a thematic structure resembling a castle. However, the SMALL device is a thematic house (100A) and applicant admits that “toys, i.e., houses, castles and the like...are known in the art.” Column 3, Lines 8-10. As such, it would have been obvious to one of ordinary skill in the art at the time of invention to make simple modifications to the exterior of the SMALL doll house (100A) to produce a thematic structure resembling a castle as taught by the prior art as admitted by applicant in order to provide a castle having a light source that imitates the nature of a real candle whose flame can be extinguished when a person blows upon it to extinguish the flame. Notably, more than mere change of form is necessary for patentability. *Span-Deck Inc. v. Fab-Con. Inc.*, 215 USPQ 835.

7. Claims 1, 2, 4, 5, 8, 9, 11, 13-15, 18, 20 and 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over JANNING (US 3,479,561), and further in view of applicants admitted prior art. JANNING discloses an electric candle/lamp (10) having a light source (22), which is responsive to motion of air whereby causing said light source to cease yielding illumination (Column 4, Lines 52-66), powered by a battery (112) and has a manual power switch (70). JANNING does not disclose use of a lamp within an operably closed chamber having windows. However, applicant admits that “toys, i.e., houses, castles...having a light source contained therein for producing

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luminescence through windows or related openings in the device are known in the art.” Column 3, Lines 8-10. Moreover, applicant admits, “Some thematic devices attempt to depict a candle as a form of a light source.” Column 3, Lines 10-11. As such, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the prior art as admitted by applicant, i.e. the houses and/or castles, which utilize a candle as a form of a light source and use the lamp as taught by JANNING in order to provide a house and or castle having a light source that imitates the nature of a real candle whose flame can be extinguished when a person blows upon it to extinguish the flame.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. RHOADS (1, 484, 964) discloses an illuminating device in the appearance of a castle having a plurality of light sources and windows.
9. NAFFIER (US 4,187,532) discloses a battery-operated candle having an air-pressure switch permitting the candle to be extinguished by blowing at the switch.
10. GIBSON (US 4,462,066) discloses a plurality of electronic candles for a doll house.
11. CHUNG (US 5,174,645) discloses an electric candle having a sensor that permits the candle to be extinguished by blowing at the sensor.
12. ARRIOLA (US 6,056,623) discloses a thematic structure constructed of translucent and opaque material with an internal light source.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Rehm whose telephone number is 571.272.8589. The examiner can normally be reached on M-F 9-5:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571.272.2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ACR
8/4/2005


ALAN CARIASO
PRIMARY EXAMINER